GAHC010147562020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./524/2020

PADMESWAR GOGOI
S/O. TULARAM GOGOI, VILL. RAIYA BOKAL GAON, P.S. PANIGAON, DIST. LAKHIMPUR, ASSAM, PIN-787001.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM.

2:KANAK CHANDRA KONCH

S/O. LT. THIK KONCH
R/O. RAMNAGAR WARD NO.3
P.O. DHEMAJI
P.S. DHEMAJI
DIST. DHEMAJI
ASSAM
PIN-787057

Advocate for the Petitioner : MR. D PHUKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 03-12-2020

Heard Mr. D. Phukan, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Addl. P.P., Assam for the respondent No. 1, as well as Mr. K.H. Khandakar, learned counsel for the respondent No. 2.

By this petition under Section 482 CrPC, the petitioner prays for quashing the FIR dated 25.06.2020 lodged by the respondent No. 2 and the proceeding in Dhemaji P.S. Case No. 257/2020 under Section 419/420/468 IPC.

Learned counsel for the petitioner submits that already an FIR was lodged by one Nripen Ch. Bora for the same offence, on the basis of which Panigaon P.S. Case No. 9/2020 was registered under Section 120B/420/406/468 IPC. The contention of the learned counsel for the petitioner is that the instant FIR is a second FIR for the same occurrence and as such, it should be quashed for the reason, that there cannot be a second FIR for the same occurrence.

Learned counsel for the respondent No. 2 submits that the FIR in the instant case lodged by the respondent No. 2 has nothing to do with the FIR dated 17.01.2020 and as such, the instant FIR can by no stretch of imagination be termed as second FIR for the offence alleged in the FIR lodged by the S.I. of Police Nripen Ch. Bora on 17.01.2020, giving rise to Panigaon P.S. Case No. 9/2020.

As regards the legal proposition that there cannot be two FIRs or a second FIR for the same occurrence, there is no quarrel.

In view of the rival submission made by the learned counsel for both the sides, I have perused both the FIR, one being dated 17.01.2020 and the other dated 25.06.2020, involved in the instant case. In the FIR dated 17.01.2020 lodged by S.I. of Police Nripen Ch. Bora, it was alleged that Padmeswar Gogoi (petitioner herein) along with one Dhrubajit Saikia fraudulently collected Rs. 3,00,000/- each from 163 persons for supply of vehicle and promised to pay Rs. 25,000/- per month for a period of 4 years, which they never paid. It was also alleged that said Padmeswar Gogoi and his companion also forged various documents in the name of Oil India Limited, Duliajan. On the basis of the said FIR, Panigaon P.S. Case No. 9/2020 was registered, whereas, in the instant FIR lodged by the respondent No. 2, it was alleged that on 13.08.2019, the petitioner promised to provide him a Bolero vehicle by way of purchase and it was also promised that the said vehicle will be given on rent to Oil India Limited at Rs. 25,400/- per month for a period of 48 months and thereafter the vehicle would be returned to him and upon such promise, the petitioner took Rs. 2,90,000/- from the

informant in two installments. Thereafter the petitioner was avoiding the informant.

From the above specific allegation made in the FIR lodged by the respondent No. 2, it can by no stretch of imagination be called as second FIR for the offence alleged in the FIR lodged by Nripen Ch. Bora on 17.01.2020. It is also apparent that the FIR dated 25.06.2020 discloses criminal offence.

Since the instant FIR is apparently not a second FIR, which also prima facie discloses criminal offence, the same cannot be quashed in exercise of inherent power under Section 482 CrPC, inasmuch as, law with regard to quashing criminal proceeding at the threshold is well settled that when the allegations made in the FIR or complaint taken in entirety in its face value makes out any offence, the inherent power under Section 482 CrPC cannot be invoked.

Therefore having regard to the nature of allegation made in the FIR and the scope of interference with the criminal proceeding at the threshold, I am unable to concur with the submission made by the learned counsel for the petitioner and accordingly, the criminal petition is dismissed.

JUDGE

Comparing Assistant